

STATE OF MICHIGAN
COURT OF APPEALS

NANCY L. GOOLDY,

Plaintiff-Appellant,

v

GARRY L. GOOLDY, SR.,

Defendant-Appellee.

UNPUBLISHED
February 10, 2005

No. 250195
Jackson Circuit Court
LC No. 02-003752-DO

Before: Markey, Murphy and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals by right from a judgment of divorce. The parties had been married 31 years, but they had been separated for almost five years before the divorce. We affirm.

Plaintiff argues the trial court erred in using the date the parties’ separated rather than the date of the judgment of divorce, for calculating the value of defendant’s pension benefits from his employer. The trial court’s selection of a valuation date is reviewed for an abuse of discretion. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997); *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991). The valuation date need not coincide with the entry of the judgment of divorce. *Id.* at 199-200. We review the trial court’s findings of fact for clear error and will reverse a dispositional ruling only if we are left with the firm conviction it was inequitable in light of the facts. *Byington, supra* at 109.

A trial court “may properly consider manifestations of intent to lead separate lives when *apportioning* the marital estate.” *Byington, supra* at 113-114 (emphasis in original). Pension benefits are unquestionably assets that are considered part of the marital estate, and they may be distributed at the court’s discretion. MCL 552.18(1); *Boonstra v Boonstra*, 209 Mich App 558, 563; 531 NW2d 777 (1995).

The trial court’s choice of the date of separation as the date for valuing defendant’s pension does not constitute an abuse of discretion. From the five-year gap between the parties’ separation and divorce, it is clear that “the objects of matrimony had been irreconcilably destroyed” long before the judgment of divorce. *Thompson, supra* at 199. While plaintiff testified that her love for defendant and belief that reconciliation was possible was the root of her delay in filing for divorce, they never reconciled during their separation. Defendant lived with his girlfriend during four of those years, and his financial support of plaintiff dwindled after their 1999 separation. Because the lengthy separation manifested the parties’ “intent to lead separate

lives,” *Byington, supra* at 115-116, the trial court’s choice of the date of separation was not an abuse of discretion.¹

We affirm.

/s/ Jane E. Markey

/s/ William B. Murphy

/s/ Peter D. O’Connell

¹ In the context of plaintiff’s argument for reversal, defendant implicitly requests reversal, but for a different reason. Defendant argues that he is entitled to a more equitable share of the marital assets. However, we will not review this issue because defendant has not raised it in a cross appeal. MCR 7.207(A)(1); *Barnell v Taubman Co, Inc*, 203 Mich App 110, 123; 512 NW2d 13 (1994).